

**SUBCHAPTER D : AFFECTED STATE REVIEW, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REVIEW,
AND CITIZEN PETITION**

§122.310. Transmission of Information to the United States Environmental Protection Agency (EPA).

The Texas Natural Resource Conservation Commission shall provide the EPA with a copy of each proposed permit and each final federal operating permit.

Adopted August 23, 1993

Effective September 20, 1993

§122.311. Affected State Review.

(a) The Texas Natural Resource Conservation Commission (TNRCC) shall provide notice of the draft permit for permit issuance, renewal, permit revision, and permit reopening to any affected state on or before the time notice is provided to the public under Subchapter B of this chapter (relating to Permit Requirements).

(b) Affected state(s) shall have 30 days from date of notification of the draft permit to comment on the draft permit.

(c) The TNRCC shall notify the United States Environmental Protection Agency and any affected state, in writing, of its refusal to incorporate any or all recommendations into the proposed permit that the affected state submitted during the affected state review period. The notice shall include the TNRCC's reasons for not accepting any such recommendations that are not based on applicable requirements.

Adopted August 23, 1993

Effective September 20, 1993

§122.312. United States Environmental Protection Agency (EPA) Review.

(a) After the end of the public comment period provided for by §122.155 of this title (relating to Public Comment Period), the Commission or its designee shall submit the proposed permit to the EPA. Upon receipt of a proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit by the Commission or its designee pursuant to Subchapter B of this chapter (relating to Permit Requirements) if EPA determines the proposed permit is not in compliance with applicable requirements of the federal operating permit program or the rules promulgated thereunder. If EPA submits such an objection, the proposed permit shall not be issued by the Commission or its designee.

(b) If the Commission or its designee fails, within 90 days after the date of an objection under subsection (a) of this section, to revise the proposed permit and submit a revised permit in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under Title V of the Act.

Adopted August 23, 1993

Effective September 20, 1993

§122.314. Public Petitions to United States Environmental Protection Agency (EPA).

(a) If the EPA does not file an objection with the Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee, pursuant to Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition), any person, including the applicant, affected by a decision of the Commission or its designee under this chapter may petition the EPA to make such an objection within 60 days of the expiration of the EPA's 45-day review period.

(b) A copy of the petition shall be provided to the TNRCC and to the applicant by the petitioner.

(c) The petition for review to EPA under this section does not limit the effectiveness of a permit issued by the Commission or its designee or the finality of the Commission's or its designee's action for purposes of an appeal under the Texas Health and Safety Code, §382.032.

(d) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subchapter B of this chapter (relating to Permit Requirements), unless the petitioner demonstrates in the petition to the EPA that it was impracticable to raise such objections within the public comment period, or that the grounds for such objection arose after the public comment period. The petition shall identify all objections.

(e) Prior to issuance of the permit, if the EPA objects to the permit as a result of a petition filed under this section, the Commission or its designee shall not issue the permit until EPA's objection has been resolved.

(f) If the Commission or its designee has issued a permit prior to receipt of an EPA objection based on a citizen petition, the permit remains effective and the board or its designee shall have 90 days from the receipt of the EPA's objection to resolve the objection and to terminate, revise, or revoke and reissue the permit. In the event additional information is needed from the permittee, the TNRCC may request from EPA a 90-day extension to resolve the EPA objection. If the TNRCC fails to resolve the objection, EPA will revise, terminate, or revoke such permit, and the Commission or its designee may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the owner or operator of the site will not be in violation of the requirement to have submitted a timely and complete application.

Adopted August 23, 1993

Effective September 20, 1993

§122.316. Hearing and Comment Procedures for Operating Permits.

Any hearing regarding a federal operating permit will be conducted according to the following procedures and not under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Such hearing shall be convened pursuant to a request in accordance with Subchapter B of this chapter (relating to Permit Requirements).

(1) Requests for notice and comment hearing.

(A) Any person who may be affected by emissions from a site regulated under this chapter may request the Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee to hold a hearing on that owner or operator's application for a federal operating permit or renewal application or the reopening of a federal operating permit.

(B) After reviewing a request for a hearing, the Commission or its designee shall decide whether to call the hearing and shall provide written notice to each person who requested a hearing and to the applicant within a reasonable time after receipt of the hearing request. The Commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(2) Procedures for notice and comment hearing.

(A) The TNRCC shall provide 30 days advance notice of any hearing regarding a federal operating permit. In addition to publication in the Texas Register, notice will be sent to all persons who have made timely written requests for a hearing and to the applicant. The notice shall include:

- (i) a statement of the time, place, and nature of the hearing;
- (ii) a reference to the particular sections of the statutes and regulations involved; and
- (iii) a brief description of the purpose of the hearing.

(B) Whenever a hearing will be held, the Commission or its designee shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(C) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The period for submitting written comments shall be automatically extended to the close of any public hearing. The hearing officer may also extend the period for submitting written comments by so stating at the hearing.

(D) A tape recording or written transcript of the hearing shall be made available to the public.

(E) Any person, including the applicant, who believes that the conditions of the draft permit do not provide for compliance with all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions) or that any condition of a draft permit is inappropriate or that the Commission or its designee's preliminary decision to issue or deny the draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting his or her position by the close of the public comment period, including any public hearing. Any

supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of state or federal statutes and regulations, United States Environmental Protection Agency documents of general applicability, or other generally available reference materials.

(F) All comments received either during the public comment period or during any hearing shall be considered by and responded to by the Commission or its designee. The response to comments shall be available to the public and shall be sent to the applicant and any person participating in the public hearing. This response shall:

(i) specify which provisions, if any, of the draft permit have been changed in the proposed permit and the reasons for the change; and

(ii) identify the party making the comments, and briefly describe and respond to all comments on the draft permit raised during the public comment period or during any hearing.

(G) The TNRCC shall keep a record of all comments and also of the issues raised in the public hearing. This record shall be available to the public.

Adopted August 23, 1993

Effective September 20, 1993